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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

VICKIE L. MARCH,  
Plaintiff,

Civil No. 09-903-AA  
OPINION AND ORDER

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Defendant.

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AIKEN, Chief Judge:

Claimant, Vickie March, brings this action pursuant to the  
Social Security Act (the Act), 42 U.S.C. §§ 405(g) and

1 1383(c)(3), to obtain judicial review of a final decision of the  
2 Commissioner denying her application for disability insurance  
3 benefits under Title II of the Act and for Supplemental Security  
4 Income (SSI) disability benefits under Title XVI of the Act. For  
5 the reasons set forth below, the Commissioner's decision is  
6 affirmed and this case is dismissed.

#### 7 **PROCEDURAL BACKGROUND**

8 Plaintiff filed her applications on December 28, 2005. Tr.  
9 11, 143. After a hearing, the Administrative Law Judge (ALJ)  
10 Richard Say, on November 25, 2008, denied plaintiff's claims for  
11 benefits. Tr. 8-20. On June 10, 2009, the Appeals Council  
12 denied review. Tr. 1-3. Therefore, the ALJ's decision stands as  
13 the final decision of the Commissioner in this case. Plaintiff  
14 now seeks review of that decision.

#### 15 **STATEMENT OF THE FACTS**

16 Plaintiff alleges she became disabled on June 1, 2003. Tr.  
17 11, 24. She was last insured for Title II benefits on June 30,  
18 2003. Tr. 11, 143. Plaintiff was born in 1958 and was 50 years  
19 old at the time of the hearing decision. Tr. 20, 717. Plaintiff  
20 completed high school and attended specialized training in  
21 "medical billing." Tr. 156. Plaintiff has past relevant work as  
22 an office manager, farm hand, caregiver, janitor, landscape  
23 laborer, information clerk, and housekeeper. Tr. 19, 173.

#### 24 **STANDARD OF REVIEW**

25 This court must affirm the Secretary's decision if it is  
26 based on proper legal standards and the findings are supported by  
27 substantial evidence in the record. Hammock v. Bowen, 879 F.2d  
28 498, 501 (9th Cir. 1989). Substantial evidence is "more than a

1 mere scintilla. It means such relevant evidence as a reasonable  
2 mind might accept as adequate to support a conclusion."  
3 Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting  
4 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).  
5 The court must weigh "both the evidence that supports and  
6 detracts from the Secretary's conclusion." Martinez v. Heckler,  
7 807 F.2d 771, 772 (9th Cir. 1986).

8 The initial burden of proof rests upon the claimant to  
9 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486  
10 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate  
11 an "inability to engage in any substantial gainful activity by  
12 reason of any medically determinable physical or mental  
13 impairment which can be expected . . . to last for a continuous  
14 period of not less than 12 months. . . ." 42 U.S.C. §  
15 423(d)(1)(A).

16 The Secretary has established a five-step sequential  
17 process for determining whether a person is disabled. Bowen v.  
18 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1520,  
19 416.920. First the Secretary determines whether a claimant is  
20 engaged in "substantial gainful activity." If so, the claimant  
21 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R. §§  
22 404.1520(b), 416.920(b).

23 In step two the Secretary determines whether the claimant  
24 has a "medically severe impairment or combination of  
25 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.  
26 §§ 404.1520(c), 416.920(c). If not, the claimant is not  
27 disabled.

28 In step three the Secretary determines whether the

1 impairment meets or equals "one of a number of listed impairments  
2 that the Secretary acknowledges are so severe as to preclude  
3 substantial gainful activity." Id.; see 20 C.F.R. §§  
4 404.1520(d), 416.920(d). If so, the claimant is conclusively  
5 presumed disabled; if not, the Secretary proceeds to step four.  
6 Yuckert, 482 U.S. at 141.

7 In step four the Secretary determines whether the claimant  
8 can still perform "past relevant work." 20 C.F.R. §§  
9 404.1520(e), 416.920(e). If the claimant can work, she is not  
10 disabled. If she cannot perform past relevant work, the burden  
11 shifts to the Secretary. In step five, the Secretary must  
12 establish that the claimant can perform other work. Yuckert, 482  
13 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e)-(g), 416.920(e)-(g).  
14 If the Secretary meets this burden and proves that the claimant  
15 is able to perform other work which exists in the national  
16 economy, she is not disabled. 20 C.F.R. §§ 404.1566, 416.966.

## 17 **DISCUSSION**

### 18 1. The ALJ's Findings

19 In step one of the five step sequential process outlined  
20 above, the ALJ found that plaintiff had engaged in substantial  
21 gainful activity since June 1, 2003, her alleged onset date of  
22 disability, as her earnings records showed substantial earnings  
23 during 2006. Tr. 13, 116.

24 In step two the ALJ determined that plaintiff had the  
25 following severe impairments: degenerative disc disease in her  
26 lumber spine, obesity, fibromyalgia, depressive disorder not  
27 otherwise specified, and somatization disorder.

28 In step three, the ALJ found plaintiff's impairments did

1 not meet or equal the requirements of a listed impairment. Tr.  
2 14. The ALJ found that plaintiff had the residual functional  
3 capacity (RFC) to perform light exertional work. Tr. 15. The  
4 ALJ further found that plaintiff had basic reading, writing and  
5 arithmetic skills; she can occasionally stoop, crouch, crawl,  
6 kneel, climb ramps and stairs; she should avoid climbing ropes,  
7 ladders and scaffolds; she can occasionally use her lower  
8 extremities for repetitive movement and operation of foot  
9 controls; she can occasionally engage in overhead reaching; and  
10 she should avoid concentrated exposure to vibration. Tr. 15.

11 Finally, in step four, considering plaintiff's RFC, and  
12 relying on the expertise of a vocational expert (VE), the ALJ  
13 determined that plaintiff would be able to perform her past  
14 relevant work as an office manager or housekeeper. Tr. 19.

15 2. Plaintiff's Allegations of Error

16 A. Whether plaintiff's work in 2006 constituted substantial  
17 gainful activity

18 Plaintiff argues that she was paid by her boyfriend's  
19 construction company for twenty hours of work per week solely in  
20 order to qualify for health insurance coverage. The record shows  
21 that plaintiff earned \$12,807.00 in 2006. Tr. 116. Plaintiff  
22 testified these earnings reflect work she performed at her  
23 boyfriend's construction company. Tr. 26-28. Plaintiff  
24 testified that she answered telephones four hours per day, five  
25 days a week (20 hours per week). Tr. 27. Plaintiff testified,  
26 however, that her earnings did not represent payment for actual  
27 work, that in fact, her boyfriend over reported her work hours so  
28 that she could obtain health insurance through his company's

1 provider. Id. Plaintiff's boyfriend, Mr. Green, in fact,  
2 testified that plaintiff "never worked" and that she did  
3 "nothing" for the money he paid her. Tr. 37-38.

4 The ALJ found that plaintiff and Mr. Green's testimony  
5 regarding plaintiff's reported earnings were inconsistent and  
6 "demonstrated a willingness to say whatever is necessary to  
7 attain a desired end." Tr. 14. The ALJ therefore found such  
8 testimony not credible. Based on the earnings recorded on  
9 plaintiff's earnings statement in the record for 2006, plaintiff  
10 was involved in substantial gainful activity during that time.  
11 Tr. 116. Plaintiff has failed to provide sufficient credible  
12 evidence to rebut a presumption that her earnings constitute  
13 substantial gainful activity. Therefore, I will uphold the ALJ's  
14 findings at step one.

15 B. Plaintiff and Mr. Green's Credibility

16 Plaintiff alleges that the ALJ erred in finding both  
17 plaintiff and her boyfriend not credible. In order to meet her  
18 burden of proving disability, plaintiff must submit objective  
19 medical evidence establishing that she has a medical impairment  
20 that could reasonably be expected to produce the symptoms  
21 alleged. 20 C.F.R. §§ 404.1512, 416.912. If plaintiff submits  
22 objective medical findings establishing a medical impairment that  
23 would normally produce a certain amount of pain (or other  
24 symptoms) but testifies that she experiences pain at a higher  
25 level, the Commissioner may disbelieve that testimony. Nyman v.  
26 Heckler, 779 F.2d 528, 531 (9<sup>th</sup> Cir. 1985). Where there is no  
27 evidence of malingering, as here, the ALJ must provide clear and  
28 convincing reasons to reject plaintiff's testimony. Smolen v.

1 Chater, 80 F.3d 1273, 1281 (9<sup>th</sup> Cir. 1996). The ALJ provided  
2 clear and convincing reasons to reject plaintiff's testimony.  
3 Tr. 17, 723. The ALJ relied on plaintiff's robust activities of  
4 daily living; willingness to falsify insurance records; symptom  
5 exaggeration and over-reporting on examination; and only  
6 conservative and routine treatment. Tr. 17. The ALJ found that  
7 plaintiff's activities of daily living were quite involved and  
8 suggested a level of functioning higher than plaintiff testified  
9 to. Tr. 17, 158-60, 719-21. The record shows that plaintiff  
10 managed household chores (cooking, cleaning, laundry, washing  
11 dishes); managed the care of several household pets (dogs, cats  
12 and birds); drove a car (enabling her to perform grocery shopping  
13 and other household errands); assisted with farm work such as  
14 moving bales of hay and attending to livestock; participated in  
15 hobbies such as reading and shopping for antiques; participated  
16 in a book club; and was independent regarding her personal  
17 hygiene and financial affairs. While the ability to perform  
18 these activities does not indicate plaintiff's ability to perform  
19 work activities, it is inconsistent with her alleged level of  
20 impairment and allowed the ALJ to find plaintiff's testimony not  
21 credible. The ALJ relied on plaintiff's and Mr. Green's  
22 admission that they engaged in misrepresentation in order to gain  
23 access to resources (health insurance) and inferred that they may  
24 be willing to do the same in order to gain access to disability  
25 benefits. Moreover, plaintiff's credibility is further weakened  
26 by Dr. Stoltzfus's assessment, who found "significant" symptom  
27 exaggeration and over-reporting. Tr. 723. The ALJ also noted  
28 that plaintiff's statements to Dr. Stoltzfus regarding her

1 functional limitations conflict with the testimony she provided  
2 at the hearing. Tr. 720-21. The ALJ relied on plaintiff's  
3 inconsistent statements regarding her ability to perform work to  
4 find plaintiff not credible. Batson v. Commissioner, 359 F.3d  
5 1190, 1196-97 (9<sup>th</sup> Cir. 2004).

6 The record supports the ALJ's findings and conclusions  
7 regarding plaintiff's and Green's credibility. There is no  
8 dispute that plaintiff has received only conservative and routine  
9 treatment, despite her numerous subjective complaints. Her  
10 impairments have not resulted in more aggressive forms of  
11 treatment such as surgery. She has not undergone psychological  
12 treatment or mental health counseling. In fact, the record  
13 reflects very little treatment since the amended onset date. A  
14 radiological image of plaintiff's hands and right shoulder reveal  
15 no significant abnormalities. Tr. 625-27. This treatment level  
16 suggests that plaintiff's impairments do not result in  
17 significant functional limitation, which would preclude her from  
18 engaging in basic work activity. The ALJ properly found that  
19 plaintiff's conservative and routine treatment did not support  
20 the presence of an impairment which was more limiting than the  
21 RFC assessment. Tr. 17. Tommasetti v. Astrue, 533 F.3d 1035,  
22 1039-40 (9<sup>th</sup> Cir. 2008) (conservative treatment properly considered  
23 in adverse credibility determination). The ALJ's finding was  
24 based on substantial evidence.

25 C. Lay Witness Statement

26 Plaintiff alleges that the ALJ failed to properly account  
27 for Green's lay witness statement. I disagree and find that the  
28 ALJ did, in fact, properly consider Green's testimony. Tr. 17-



1 18, 37-39, 181-88. The ALJ properly provided reasons to reject  
2 Green's opinion that plaintiff was not able to perform work.  
3 Bruce v. Astrue, 557 F.3d 1113, 1115-16 (9<sup>th</sup> Cir. 2009). The ALJ  
4 found that Green's statements that plaintiff had difficulties  
5 walking, standing, lifting, engaging in postural activities,  
6 reaching, climbing, concentrating, completing tasks, using her  
7 hands and interacting with others, were not supported by  
8 objective evidence in the record. Further, the ALJ found that  
9 Green's observations were not consistent with plaintiff's stated  
10 activities of daily living. Finally, the ALJ noted Green's  
11 admission that he willfully misled his company's insurance  
12 provided in order to extend medical benefits to plaintiff. See  
13 Greger v. Barnhart, 464 F.3d 9689, 972-73 (9<sup>th</sup> Cir.  
14 2006) (upholding rejection of lay testimony based on medical  
15 evidence and close relationship to plaintiff).

16 D. Proper Consideration of Medical Record

17 The ALJ must resolve conflicts in the medical evidence.  
18 Carmicle v. Commissioner, 533 F.3d 1155, 1164 (9<sup>th</sup> Cir. 2008).  
19 The ALJ properly gave considerable weight to the physical  
20 capacity examination performed by Diane Barker, OTR/L in December  
21 2005. Tr. 611-15. The ALJ found the limitations noted by Barker  
22 consistent with the record as a whole and with the RFC. Tr. 18.  
23 Moreover, these limitations do not conflict with plaintiff's  
24 conservative treatment history or activities of daily living.

25 The ALJ gave limited weight to a consultative medical  
26 examination performed by Dr. French in February 2006. Tr. 622-  
27 24. Dr. French's findings were not supported by the record as a  
28 whole and relies primarily on plaintiff's subjective complaints,

1 instead of objective evidence. Tr. 623-24. Moreover, Dr. French  
2 offers no clear diagnosis, stating instead there is "unclear  
3 etiology" for plaintiff's complaints. Tr. 623. Further, the ALJ  
4 gave little weight to a medical source statement completed by Dr.  
5 Haddeland on July 25, 2008. Tr. 712-16. Dr. Haddeland opined  
6 that plaintiff was limited to less than sedentary work activity.  
7 His assessment, however, failed to identify any objective  
8 evidence in support of his conclusion. Rather, his opinions were  
9 based on plaintiff's subjective complaints. See Young v.  
10 Heckler, 803 F.2d 963, 968 (9<sup>th</sup> Cir. 1986) (ALJ may reject  
11 physician's opinion which is "brief and conclusory in form with  
12 little in the way of clinical findings to support [its]  
13 conclusion.").

14 Finally, in September 2008, plaintiff underwent a  
15 neuropsychological evaluation performed by Dr. Stoltzfus. Tr.  
16 717-29. Dr. Stoltzfus found that plaintiff's symptoms "wax and  
17 wane in response to her physical condition and environmental  
18 stressors." Tr. 724. He concluded that her depression was  
19 "episodic." Id. He failed to identify any significant  
20 functional limitations associated with plaintiff's mental  
21 functioning. Instead, he noted that test results were positive  
22 for "significant" symptom exaggeration and over reporting. Tr.  
23 723-24. The ALJ gave these findings considerable weight. The  
24 medical evidence in the record supports the ALJ's finding that  
25 plaintiff is not disabled. The ALJ's analysis of the medical  
26 evidence was proper and adequately supported by substantial  
27 evidence. Moreover, when the evidence is susceptible to more  
28 than one rational interpretation, the Commissioner's conclusion

1 must be upheld. Batson, 359 F.3d at 1195.

2 E. Plaintiff's RFC

3 Plaintiff argues that the ALJ did not properly determine  
4 her residual functional capacity because it failed to include all  
5 of her alleged limitations. The ALJ thoroughly considered the  
6 medical record and testimony. The ALJ properly incorporated all  
7 credible limitations in the RFC finding. Tr. 15. See Osenbrock  
8 v. Apfel, 240 F.3d 1157, 1165 (9<sup>th</sup> Cir. 2001)(RFC finding and  
9 hypothetical to the vocational expert appropriately included only  
10 limitations "based on medical assumptions supported by  
11 substantial evidence in the record that reflect[ed] all the  
12 claimant's limitations."). I find no error in the ALJ's RFC  
13 finding.

14 **CONCLUSION**

15 The Commissioner's decision is based on substantial  
16 evidence, and is therefore, affirmed. This case is dismissed.  
17 IT IS SO ORDERED.

18 Dated this 29 day of September 2010.

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22 \_\_\_\_\_  
23 Ann Aiken  
24 United States District Judge  
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